



Montana Department of  
**ENVIRONMENTAL QUALITY**

SENATE BILL NO. 446  
DATE 2-14-07  
SB 446

Brian Schweitzer, Governor

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**SB 446**

**Department of Environmental Quality Testimony  
Senate Natural Resources Committee  
February 14, 2007**

**BACKGROUND**

**PWS Review Exemption**

The Water Quality Act requires a permit for the discharge of sewage or industrial wastes to state waters. The Water Quality Act and rules adopted there under do not require an engineering review or an approval of plans and specifications for a public wastewater system that must obtain discharge permit. The Public Water Supply Act, however, requires public wastewater systems to meet certain engineering design standards as adopted by the Board of Environmental Review in Circulars DEQ-2 (Municipal Wastewater) and DEQ-4 (Subsurface Wastewater Systems). Approval must be obtained prior to construction or operation

In 1995 the Public Water Supply Act was amended to include the exemption

*"...However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section."*

At that time it was believed that the reviews performed under the Water Quality Act and Public Water Supply Act were duplicative and unnecessary. In addition, industrial discharges which did not co-mingle with domestic sewage were also subject to Public Water review even though the adopted standards did not directly apply to industrial discharges.

The Department believes both Public Water plan and specification review and approval and Water Quality discharge permitting are important functions necessary to protect public health and the environment when domestic sewage is involved. While the Water Quality permit assures that the discharge into state waters will not significantly impact or degrade the quality of the water, the Public Water review assures that the system is adequately sized, constructed to standard specifications, and adequately operated to safely meet the treatment capacity needed for the protection of public health.

Despite the exemption in the statute, most systems that fall under this category are still reviewed by the department. Larger municipal wastewater systems usually obtain funding assistance or low-interest loans to pay for construction from state and federal funding programs. Under the funding requirements, these discharging facilities are required to comply with the design standards and are given an engineering design review that the Public Water Supply Act exemption would not require. Additionally, subdivision regulations specifically require proposed wastewater systems to meet the engineering standards established in state regulations and are reviewed even though the Public Water Supply Act exempts dischargers.

With this bill the Department proposes to continue its review of plans and specifications for the domestic portion of a combined domestic/industrial system up to the point the

wastes are mixed. Purely industrial waste or combined systems after mixing will continue to require a Water Quality Act discharge permit but will not be subject to review under the Public Water Supply Act.

### **Technical and Managerial Capacity**

The Environmental Protection Agency requires DEQ to certify that we have authority to adopt capacity development rules that pertain to financial, technical, and managerial functions. The penalty for failure to certify this authority is significant reduction in Drinking Water SRF funds. The authority in state law to adopt financial capacity rules is express. The authority to adopt rules pertaining to technical and managerial functions is not. The Board of Environmental Review has authority to adopt rules for operation of public water supplies, thus DEQ probably can claim the necessary authority for technical functions. The same argument can be made for managerial functions, although it is a bit more tenuous. DEQ Chief Legal Counsel advises that if the department proposes other changes to the Public Water Supply Act, we include in those changes an amendment to 75-6-103(1) to expressly add rulemaking authority for technical and managerial functions.

### **Surface Water Source Protection**

The original Montana Wellhead Protection Program was developed to meet the requirements of the 1986 federal safe drinking water act (SDWA). Title 75, Chapter 6 MCA was modified in 1995 to reflect the 1986 law. In 1996, amendments were made to the federal SDWA. The 1996 SDWA requires states to develop a source water protection program. The term "source water" is reflective of the broader application of the program that is now required including both surface water in addition to ground water. From a practical standpoint it means that the concept of source water protection is applied to all sources of drinking water and not just well water. Approximately three-percent of public water supplies are from surface water sources.

### **EXAMPLES**

Some examples which highlight the importance of plan and specification review are listed below. None of these issues would have been discovered if review had been limited solely to Water Quality Act permitting.

Yellowstone County, pressure-dosed drainfield, WQA permit for subsurface discharge of greater than 5,000 gpd.

- Difficulty in determining average and peak flow demands
- Septic tank insufficiently sized
- Absorption trenches sited too close to surface water and inadequately sized

Flathead County, Sequencing Batch Reactor treatment with surface water discharge and spray irrigation, WQA permit for surface water discharge.

- Inadequate lagoon aeration, affecting odors
- Insufficient operational safeguards
- Excessive quality of wastewater for spray irrigation was proposed
- Treatment critical to discharging effluent meeting standards to Middle Fork of Flathead River

Cascade County, pressure-dosed drainfield, WQA permit for subsurface discharge of greater than 5,000 gpd.

- Septic tank design flawed (inlet baffle and effluent filter elevation, inadequate air space)
- Inadequately sized grease trap, possibly resulting in high-strength waste
- Did not meet minimum standards for depth of drain rock or cover material
- Inadequately sized dose pump

#### **SECTION-BY-SECTION DESCRIPTION**

**Section 1** amends 37-42-102 (6) and (7) by adding definitions of "Industrial waste" and "Industrial waste discharge system" to the Water and Wastewater Treatment Plant Operator Act. These definitions were previously included in this Act by reference to 75-6-102, but will be deleted with this bill. They must be re-inserted in 37-42-102 to retain the requirement for operator certification for industrial wastewater treatment plants.

**Section 2** amends 75-6-102 by changing the definition of "certified wellhead protection area" to "certified source water protection area" to allow for voluntary protection programs of surface water as well as groundwater systems (see Section 6)

Section 2 also removes the definition of "industrial water discharge system". The requirement for plan and specification review of "industrial waste discharge system" will be deleted from 75-6-112 with this bill so the definition is no longer necessary.

**Section 3** amends 75-6-103 by allowing the Board of Environmental Review to adopt rules and standards for the review of the technical and managerial capacity of a proposed public water or wastewater system as opposed to solely financial capacity.

**Section 4** amends 75-6-104 to remove "industrial waste" from Department authority and responsibility under the Public Water Supply Act.

**Section 5** amends 75-6-112 by removing prohibitions from the Public Water Supply Act duplicated in the Water Quality Act.

Section 5 also removes the exemption from plan and specification review of facilities subject to WQA permitting.

**Section 6** amends 75-6-120 by changing references of "Wellhead protection program" to "Wellhead and source water protection program" to allow for voluntary protection programs of surface water as well as groundwater systems.